

Application No.: 09/371,212
Amendment dated: August 25, 2004
Reply to Office Action of: February 25, 2004

REMARKS

This amendment is responsive to the final Office Action dated February 25, 2004, and is submitted with a Request for Continued Examination (RCE). In the Advisory Action mailed April 15, 2004, the Examiner indicated that the proposed amendments will not be entered because they raise new issues that would require further consideration and or search. By submitting this response with the Request for Continued Examination (RCE), Applicant respectfully requests continued consideration by the Examiner. Claims remaining in this case are 51-111, for which reconsideration is respectfully requested in view of the following comments.

Regarding the rejection, under 35 U.S.C. Section 112, Applicant recognizes that the Examiner may be relying on a possible ambiguity in the prior claims with regard to the disclosed embodiment. Accordingly, Applicant has amended the claims. Although the scope of the claims remains unchanged, the terminology and phrasing coincides to the description of the disclosed embodiment. Accordingly, Applicant submits that the rejection has been duly addressed and overcome.

Regarding the rejection of the claims under 35 U.S.C. Section 103, reconsideration is respectfully requested in view of non-analogous character of the four applied references, specifically, Shavit et al., Kaye et al., Smith, and Foster et al.

As initial evidence of "nonanalogy," Applicant points to the PTO classifications assigned to each of the subject references that are of interest (MPEP ¶2141.01)(a). In that regard, Applicant has indicated the classifications below and notes that the four references fall under definitely distinct classifications:

- | | | |
|-----|---------------|-------------------|
| (1) | Shavit et al. | 364/401 and 408 |
| (2) | Kaye et al. | 395/228, 229, 615 |
| (3) | Smith | 348/17,96 |
| (4) | Foster et al. | 379/94,105 |

There is no coincidence whatsoever with regard to the PTO classifications of the reference patents.

In considerations involving non-analogous art, the significance of "the similarities and differences in structure and function of the inventions" is recognized (see MPEP ¶2141.01)(a).

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Note the functions of each of the applied references here. Shavit et al., is directed to a system for processing business transactions, which includes providing selective access to vendors.

However, the functions of the other applied references are quite distinct indicating that they constitute non-analogous art. Specifically, Kaye et al., is directed to locating a vendor and is limited to that function. Foster et al, is limited to an order entry system as in pay-per-view applications. Smith involves the combination of audio and video signals from different sources and is limited to that function. Thus, the functions of the inventions disclosed in the cited references, are quite distinct, again indicating that the references are non-analogous art.

As for the structures disclosed in these references, one can only note the commonality of computer-related elements. Otherwise, the structures disclosed in the references asserted are quite distinct. Again, that indicates that the references constitute non-analogous art.

In the final analysis, the above considerations relate to the question of whether one of ordinary skill in the art would consider the applied references (being analogous) and combine them as suggested by the Examiner. In addition to the fact that the references asserted constitute non-analogous art, there is another consideration of the number of references one of ordinary skill in the art must combine to arrive at the claimed invention. For purposes of argument, it may be reasonable for one of ordinary skill in the art to perhaps combine two references; however, expecting that person to collect and consider four pieces of art is submitted to be outside the realm of reasonable logic.

In view of the amendments and arguments presented here, reconsideration is respectfully requested.

Respectfully submitted,

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By:

Reena Kuyper
Reena Kuyper
Registration No. 33,830

9220 Sunset Blvd., Suite 303
Los Angeles, CA 90069
(310) 247-2860